

If Conscription Comes

The present position under the Militia
Ballot Act explained

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PREFACE.

FOR some weeks past the question of Recruiting for the New Army has been universally discussed in the Press, and it is unquestionable that there has recently been a rapid growth of public opinion among all classes in Great Britain in favour of Conscription. Rumour has already credited the Government with an intention to resort to the use of the ballot, as sanctioned in the various Militia Ballot Acts. It is hoped that the brief explanation of the Ballot system, as legalised in England and Ireland, which is given in the following pages, may help the average citizen to a comprehension of the nature and extent of his liability to compulsory military service, in the event of Parliament deciding to make use of the statutory power, at present merely suspended, of raising men by ballot under the Militia Ballot Acts.

J. A. R.

11th November, 1914.

CHAPTER I.

THE NEED FOR RECRUITS.

It may safely be assumed that the question of the measures necessary to be adopted for recruiting Lord Kitchener's New Army will engage the immediate attention of the Government and Parliament. Even in Great Britain the response to the War Secretary's urgent appeal for men has not been as satisfactory as it was hoped it would be, while in Ireland the rate of recruiting up to the present has caused general disappointment. So far as Ireland is concerned, she contributes in normal times something more than her proportionate share of soldiers to the Regular Army. In the early days of the war it was confidently anticipated that, in view of the fact that the cause of the Allies made a peculiar appeal to our sympathies—an appeal that was re-inforced by

Mr. Redmond's declaration at the Mansion House meeting that this was Ireland's war—our young men would flock to the Colours. This expectation, however, remains as yet unfulfilled. So far, Ireland as a whole has supplied less than 40,000 men to the New Army, the approximate figures being :—Ulster, 24,000, and the other three Provinces taken together, 15,000.

Yet the following statistics of population show that Great Britain and Ireland are better able to supply the right material for the New Army than either France or Germany :—

ENGLAND AND WALES.

Ages			No. of Unmarried Males
18 to 35	..	..	3,032,011
18 to 45	..	..	3,426,296

SCOTLAND.

Ages			No. of Unmarried Males
18 to 35	..	..	446,355
18 to 45	..	..	508,142

IRELAND.

Ages			No. of Unmarried Males
18 to 35	..	..	490,731
18 to 45	..	..	604,079

In view of the fact that not one-fourth of the men of England and Wales, who are eligible for active service, have responded to Lord Kitchener's call, and having regard also to the fact that the present rate of recruiting in Ireland is so slow, it is not surprising to find that there is a steady growth of public opinion among all classes in Great Britain in favour of Conscription. The Liberal Party is, of course, opposed to Conscription, and it may be assumed that the Government will have recourse to such a measure only when all other expedients have failed. The voluntary system, however, is being subjected to a supreme test, and the state of the campaign, and the urgent need for men and still more men, may force the hands of the Government and oblige them, in face of imminent national danger, to adopt some form of Conscription.

In the event of such a development, it

is not at all unlikely that the Government should decide to adopt that form of Conscription for which there is constitutional warrant, and the machinery for the putting into force of which exists ready to hand, under the various enactments known as the Militia Ballot Acts. A resort to the use of the ballot, as sanctioned by those Acts, would not involve any real sacrifice of principle on the part of those who oppose Conscription in the sense in which that word is understood on the Continent.

CHAPTER II.

THE MILITIA BALLOT ACTS.

Impressment in England was Conscription finally abolished in 1640, and in England. since the date of the Restoration compulsory service in the Regular Army has been practically unknown, except under the operation of Acts passed at different times authorising impressment of persons of the vagrant class not having a lawful employment. The standing army,

as is the case at present, has all along, with this exception, been recruited by voluntary enlistment.

The old English national and constitutional force was the militia which, it is hardly necessary to remind the reader, ceased to exist under the operation of the Territorial and Reserve Forces Act, 1907. The ancient English militia system was reorganised under an Act passed in 1757, which placed upon the county or parish a liability to provide recruits. Each county was required to furnish a quota; the men were to be drawn by lot, and to serve for three years, and vacancies were to be filled from time to time by like process of ballot. The ages of liability were 18 to 45, and a man drawn by lot who, for any reason, was unable or unwilling to serve was allowed to provide a substitute. Generally speaking, the ballot system thus legalised was that which remained in force while the militia continued to exist. From time to time amendments were introduced, and the various Militia Acts were consolidated in 1802 by 42 Geo. III. c. 9, which Act, as

subsequently amended, is still in force (though suspended) as regards the ballot. Under the Militia Act, 1852, the militia became a force of voluntarily enlisted men, with the BALLOT IN RESERVE, as the Act of that year empowered the Crown to resort to the ballot in case the quota of any county was not raised by voluntary enlistment, and also in case of invasion or imminent danger. In 1871 Parliament introduced an important constitutional change, by enacting that henceforth the control of the militia should rest in the Crown instead of in the Lord Lieutenant of the county. In 1881 the militia became part of the Regular Forces of the Crown, with limitations as to the time and area of service, and other special conditions. Though enlistment was voluntary, compulsory service by ballot remained legal, but suspended. Neither the Militia Act of 1875, nor any of the subsequent Militia Acts repealed those enactments which related solely to the raising of men by ballot when that process should become necessary.

The Militia of Ireland was first organised by an Act of the Irish Parliament passed in 1715, which restricted the force to Protestants between the ages of 16 and 60. In 1793 an Act was passed repealing and replacing the existing legislation, and providing for the raising of a force of militia, according to a fixed quota, by the ballot, among men between the ages of 18 and 45, the term of service being four years. Each county was liable to a fine of £5 for each man deficient. Governors of counties were authorised to array and train the force, subject to the approval of the Lord Lieutenant, and the raising of the force was made compulsory. This Act was amended in 1795, and again, in every succeeding year, till the Union of Ireland with Great Britain. This and all the other Acts governing the Irish Militia were consolidated in 1809 by an Act of the Parliament of the United Kingdom (49 Geo. III. c. 120), which fixed the establishment of each regiment and provided for the raising of the men by means of the ballot, but gave power to the Lord Lieutenant to

authorise the raising of men by voluntary enlistment by means of bounties.

Embodiment converted the **Embodiment** militia into a regular army, but with the limitation that it was an army that could not be called upon to serve abroad. Embodiment could take place only in case "of imminent national danger or of great emergency," and the occasion must first have been communicated to Parliament, if sitting, and, if not sitting, proclaimed by Order in Council. The discipline of the force, when embodied, depended upon the passing of the Army (Annual) Act.

During the latter part of the
Levy eighteenth century, and espe-
by Ballot cially during the Napoleonic
in War. campaigns, resort was frequently
had to the ballot for the purpose
of recruiting for the militia. The embodi-
ment of the militia released a considerable
proportion of the Regular Army for foreign
service, who would otherwise have been
required for home defence, and also supplied
recruits for the first line. In 1803 the number

of men raised for the militia by ballot in England was 43,492, but of these no fewer than 40,998 were substitutes. After the Peace of 1815, however, the militia was allowed practically to fall into abeyance for a period of nearly forty years, the only occasion on which militiamen were subsequently raised by ballot being in 1831, in accordance with an Order in Council. It thus appears that during nearly the last hundred years of its existence the militia was exclusively raised by voluntary enlistment. Nevertheless, during all that time the compulsory levy by ballot remained legal, though suspended. No great national emergency demanded that the statutory power of levy should be used.

In 1865 Parliament enacted the Militia (Ballot Suspension) Act, which provides for the suspension for a year of meetings relating to the militia of the United Kingdom and ballots for such militia. It is worth while to note, however, in view of recent statements in the Press, to the effect that official measures had already

been taken, with a view to the putting in force of the ballot, that the Act of 1865 expressly enacts (S. 2)

“That it shall be lawful for Her Majesty by an Order in Council to direct that any proceedings shall be had at any time before the expiration of the period aforesaid (i.e., 1st day of October, 1866), either for the giving of notices and making returns and preparing lists, and also for the proceeding to ballot and enrol men for the filling up vacancies in the Militia, as Her Majesty shall deem expedient ; and upon the issuing of any such Order all such proceedings shall be had for carrying into execution all the provisions of the Acts in force in the United Kingdom relating to the giving notices for and returns of lists, and for the balloting and enrolling of men to supply any vacancies in the Militia,” etc.

The Haldane
Act. Under the Territorial and Reserve Forces Act, 1907, for which Mr. Haldane was responsible, the old militia has virtually disappeared. Some

of it was actually disbanded, and the rest transferred to the Army Reserve to form battalions of Special Reservists, while the militia officers were given commissions in the Special Reserve of officers. What it is important to remember, however, in view of the international situation and the urgent requirements of the War Office, is that the Act of 1907 DOES NOT REPEAL THE VARIOUS MILITIA ACTS. Until these Acts are repealed, as Professor Dicey has pointed out, the statutory power of raising the militia, either local or regular, and so forming thereof regiments or corps, will continue to exist. In the latest (sixteenth) edition of Stephen's *New Commentaries on the Laws of England* the same view of the existing law is adopted, namely, that, although the old militia has virtually ceased to exist, still the power of resorting to the old militia ballot has not been abolished by the new arrangements. The Act of 1865, suspending the ballot for the militia for one year, which has been annually renewed since the date of its enactment, will, in fact, expire automatically on December 31, 1915, provided it is not included in the

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